



May 22, 2018

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Communication, GN Docket Nos. 17-183, 18-122

Dear Ms. Dortch:

On May 18, Patrick McFadden, Alison Neplokh and the undersigned, all of the National Association of Broadcasters (NAB), met with Thomas Sullivan, Paul Blais, Jose Albuquerque, Jennifer Gilsenan and Christopher Blair of the International Bureau, Matt Pearl of the Wireless Telecommunications Bureau, Roland Helvajian of the Office of Managing Director, and Deborah Broderson of the Office of General Counsel. On May 21, Patrick McFadden spoke by telephone with Jose Albuquerque, and on May 22, the undersigned spoke by telephone with Thomas Sullivan. During these meetings, NAB discussed the current filing window during which receive-only earth stations operating in the 3.7-4.2 GHz band may register to provide the Commission with more accurate information about existing earth stations as the Commission considers options for expanded use of this band.¹

NAB appreciates the Public Notice's waiver of the coordination requirement and commends the Commission staff for its efforts to make the registration process simpler for users.² We remain concerned, however, that the Commission's failure to waive registration fees places an undue and unfair burden on licensees and may discourage users from registering all earth stations, leading to inaccurate or incomplete information.

Accordingly, we discussed the Commission's legal authority to waive application fees. As a statutory matter, the Commission has authority to waive application fees for good cause shown, where such action would promote the public interest.³ While it is true that the

¹ *Temporary Freeze on Applications for New or Modified Fixed Satellite Service Earth Stations and Fixed Microwave Stations in the 3.7-4.2 GHz Band*, Public Notice, GN Docket Nos. 17-183, 18-122, DA 18-398 (April 19, 2018) (Public Notice).

² *Id.* at 4.

³ 47 U.S.C. § 158(d)(2).

Commission grants application fee waivers only upon a showing of “extraordinary and compelling circumstances,”⁴ the current filing window presents a unique circumstance that is unlikely to be repeated. To NAB’s knowledge, the Commission has not previously established a limited filing window for a previously optional filing where failure to file will have potentially significant ramifications and the expected response rate is hundreds of times higher than in the ordinary course. A limited, temporary waiver, applicable only to registrations filed during the filing window, would dramatically enhance the likelihood that the Commission will be able to collect meaningful information regarding the C-band’s use.

Further, in adopting the schedule of application fees, the Commission stated that the “very core of this effort is to reimburse the government – and the general public – for the regulatory services provided to certain members of the public” and that the application fees adopted “represent a rough approximation of the Commission’s actual cost of providing the regulatory actions listed.”⁵ In this case, because the Commission has waived the coordination requirement normally associated with registering receive-only earth stations, little or no Commission effort or cost will be required to process these applications. As a result, the fees associated with thousands of applications the Commission is likely to receive, which could be hundreds of thousands or even millions of dollars, bear no relation to the cost of providing regulatory action.

In adopting Rule 1.1119, governing requests for waivers, the Commission determined that it would grant waivers only on a case-by-case basis, rather than blanket waivers.⁶ The Commission does, however, have authority under Rule 1.3 to waive any its rules on its own motion or pursuant to petition for good cause.⁷ The Commission has applied Rule 1.3 to grant waivers to all affected entities where specific circumstances warrant a departure from the Commission’s rules to enhance the public interest.

For example, The Commission provided a limited blanket waiver of certain of its competitive bidding rules prior to auction 97 to narrow the circumstances under which an applicant would be considered a former defaulter.⁸ The Commission reasoned that a blanket waiver would “encourage broad, robust participation in Auction 97, while continuing to ensure that

⁴ *Primosphere Limited Partnership*, Memorandum Opinion and Order, 24 FCC Rcd 14780, ¶ 8 (2009).

⁵ *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, Report and Order, 2 FCC Rcd 947, ¶¶ 7-8 (1987).

⁶ 47 C.F.R. § 1.1119.

⁷ 47 C.F.R. § 1.3.

⁸ *Petition of DIRECTV Group, Inc. and EchoStar LLC for Expedited Rulemaking to Amend Section 1.2105(a)(2)(xi) and 1.2106(a) of the Commission’s Rules and/or for Interim Conditional Waiver*, Order, 29 FCC Rcd 10828 (2014).

auction bidders are financially reliable.”⁹ The Commission shares a similar interest in this proceeding in ensuring broad participation in the registration process.

Similarly, the International Bureau recently waived tariff and reporting requirements for providers of international telecommunications services pending resolution of a Commission proceeding regarding these filings. Even though such filings were required by the Commission’s rules, the Bureau determined it would temporarily waive that requirement to prevent providers from incurring potentially unnecessary expenses while the FCC determined whether the filings would continue to be required. In this case, the Commission is considering the future of the C-band, and earth stations registered during this filing window may ultimately lose the ability to operate in the C-band.

If the Commission does not waive the registration fees, at the very least NAB urges the Commission to consider streamlining the registration process by allowing applicants to submit a single Form 312, with a single filing fee, covering all of the receive-only earth stations operated by a given applicant. The International Bureau has allowed analogous filings in the past. For example, the Bureau has approved applications to modify authority to operate 1,000,000 receive-only terminals to be used for DBS service where the applicants paid a single VSAT application fee rather than 1,000,000 separate modification of license fees.¹⁰

NAB shares the Commission’s goal of ensuring that the Commission and all stakeholders have “more accurate information about existing earth stations, which will inform the Commission’s pending inquiry addressing new opportunities for use of this band.”¹¹ Finding ways to streamline the application process and reduce the burden for applicants will only help ensure that the information the Commission receives is as accurate as possible.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Rick Kaplan", with a long horizontal line extending from the end of the signature.

Rick Kaplan
General Counsel and Executive Vice President,
Legal and Regulatory Affairs
National Association of Broadcasters

⁹ *Id.* at ¶ 21.

¹⁰ See *Application of DIRECTV Enterprises, LLC*, Order and Authorization, DA 04-2526 (Aug. 13, 2004); *Satellite Communications Services Information Re: Actions Taken*, Public Notice, Report No. SES-01280 at 7, granting SES-MFS-20080724-00977 (Sept. 22, 2010).

¹¹ Public Notice at 1-2.

cc: Thomas Sullivan
Paul Blais
Jose Albuquerque
Jennifer Gilsenan
Christopher Blair
Matt Pearl
Roland Helvajian
Deborah Broderson